



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/086,627 05/29/98 BOLAND

V 7675

TM02/0130

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INTELLECTUAL PROPERTY SECTION
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EXAMINER

EDELMAN, B

ART UNIT

PAPER NUMBER

2153

DATE MAILED:

01/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/086,627

Applicant(s)

Boland

Examiner

Bradley Edelman

Group Art Unit

2153



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 3 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Aug 23, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Specifically, claims 14 and 15 raise new issues that require further consideration and/or search.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

The arguments are not persuasive.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: none

Claims rejected: 1-13

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

- ☐ Other

Dung C. Dinh
Primary Examiner

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DETAILED ACTION

Response to Arguments

In response to Applicant's amendment after final rejection filed on January 23, 2001, the following factual arguments are noted:

- a. Sumimoto does not seem to allot computer resources based on priority as the claimed invention does.
- b. Hauser does not seem to be concerned of a situation in which the network resource may be insufficient, as claimed in claim 1.
- c. A minimum resource allocation for a particularly high priority process may not be guaranteed in the Culbert system if the degradation of the high priority process serves the global optimization object of the whole system.
- d. The invention taught by Culbert teaches away from the inventions described by both Sumimoto and Hauser.

In considering all of these arguments against the references individually, Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Particularly, Examiner has combined several features described in three separate references to

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show that Applicant's claimed invention would have been obvious to one of ordinary skill in the art. All three references describe a resource allocation system, and so all three references are in a similar art. The first reference, described by Sumimoto, discloses a general resource allocation system for allocating resources to *processes*. The second reference, described by Hauser, discloses a resource allocation system wherein a *minimum allocation of resources* is allocated for specific entities. The third reference, described by Culbert, discloses a resource allocation system wherein a *priority* system is used in allocating resources. Given these three teachings, a person having ordinary skill in the art would have readily recognized the desirability and advantages of using a resource allocation scheme that combines the minimum allocation requirements taught by Hauser with the prioritized allocation requirements taught by Culbert for the process allocation system taught by Sumimoto so that the most important processes can be assured of some amount of processing resources.

Furthermore, in response to applicant's argument (d), in which Applicant contends that the invention taught by Culbert teaches away from the inventions described by both Sumimoto and Hauser, Examiner respectfully disagrees with this argument because it *is* possible to combine the various disclosed allocation schemes into a single scheme. Thus, it would have been obvious to combine multiple known allocation schemes, such as priority, minimum access, file size, etc. in a resource allocation system to provide available resources to the most desired processes.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess, can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.



Dung C. Dinh
Primary Examiner

BE

January 29, 2001